

FILED

JUL - 5 2005

[Signature]
CLERK

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION

WAYNE HOBART BIG CROW,

Petitioner,

-VS-

UNITED STATES OF AMERICA,

Respondent.

CIV 05-3008

ORDER AND OPINION DENYING
CERTIFICATE OF APPEALABILITY

TO THE EIGHTH CIRCUIT COURT OF APPEALS:

Petitioner filed a motion to vacate, set aside, or correct his conviction and sentence, contending that he was entitled to relief under the United States Supreme Court's decisions in Apprendi v. New Jersey, 530 U.S. 466, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000), Blakely v. Washington, 124 S.Ct. 2531 (2004), and United States v. Booker, 125 S.Ct. 738 (2005). The motion was filed beyond the one year period of limitations set forth in 28 U.S.C. § 2255. I summarily dismissed the petition upon initial consideration due to procedural default, finding that Apprendi, Blakely, and Booker have not been found to be retroactive on collateral review.

Pursuant to 28 U.S.C. § 2253, a certificate of appealability may issue only if the applicant has made a substantial showing of the denial of a constitutional right. Petitioner did not and has not made a substantial showing of the denial of a constitutional right.

IT IS HEREBY CERTIFIED that there does not exist probable cause of an appealable issue with respect to the Court's order denying petitioner's motion to vacate, set aside or correct his sentence.

Dated this 5th day of July, 2005.

BY THE COURT:

ATTEST:
JOSEPH HAAS, CLERK

BY *[Signature]*
DEPUTY
(SEAL)

[Signature]
CHARLES B. KORNMANN
U.S. District Judge